

## APPLICATION AND AGREEMENT FOR BENEFITS REDEMPTION EBT AND/OR (MERCHANT, NON-EXEMPT)

THIS AGREEMENT ("Agreement") between Custom Data Processing, Inc. an Illinois corporation at 1408 Joliet Road, Romeoville, Illinois 60446, and Merchant named below (hereinafter "Merchant") shall be effective as of contract execution by both parties ("Effective Date"). This Agreement relates to Electronic Benefit Transfer ("EBT") services provided by the Chickasaw Nation ("State") and shall be governed by and construed in accordance with State law, without regard to its conflict of law principles.

The Agricultural Act of 2014 P.L.113-79. Section 4002 describes the provisions & regulations regarding the use of State provided POS Equipment, supplies and software. WIC implementation follows Rule 7CFR246 Special Supplemental Nutrition Program for Women, Infants and Children and Public Law 111-296 dated 2/28/13 which describes the WIC provisions and regulations regarding the administration of these benefits. Merchant participation is governed by the State WIC Agency.

This Agreement for Benefits Redemption—WIC Rules include:

- [Definitions](#)
- [Terms and Conditions](#)
- [Section One: Merchant Information Section](#) (to be filled out by Merchant)
  - [Merchant Financial Information](#)
  - [Monthly Service and Fees Addendum](#)
  - [Signature and Acceptance](#)
- [Section Two: WIC Vendor ID](#) (to be completed by the State WIC Agency)

## DEFINITIONS

**Acquirer** means an ATM, POS, or Third-Party Processor initiating or routing a Redemption Transaction. Acquirers include Third Party Processors (TPP).

**Banking Day** means a day that is not a nationally recognized bank holiday and on which a branch of the Federal Reserve, which is used for settlement, is open for business.

**Benefit Card** means a Card issued by a governmental agency, which can be used as an access device to initiate one or more Transactions.

**Card** means any access device or account number issued to a Cardholder for use in effecting Transactions, including without limitation debit cards and Benefit Cards.

**Cardholder** means any Recipient or other individual person or entity to which a Benefit Card has been issued and who is authorized to use such Benefit Card to initiate Transactions with Merchant.

**CAS or Cardholder Authorization System** means the telecommunication and processing system (including software and hardware) operated by or on behalf of an Issuer that authorizes or declines Transaction requests.

**EBT** means Electronic Benefits Transfer, a system through which recipients of certain government benefits receive and spend funds electronically for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) using a plastic EBT card or mobile device.

**EBT System** means the Electronic Benefits Transfer (EBT) system of CDP, including without limitation the system that provides for the electronic movement of funds and is used to assist Merchants in acquiring Transactions.

**Equipment** means web-based software portals and applications provided by CDP. Any other hardware and/or tablets are going to be provided by the farmer.

**Documentation** means: (a) with respect to the EBT System, all Operating Bulletins (as they may be amended from time to time), and other information

provided to Merchant by CDP concerning the EBT System;

**Federal Regulations** means all federal laws, rules and regulations of the United States of America that are applicable under this Agreement, including but not limited to:

- a) the rules of the Food and Nutrition Service, United States Department of Agriculture that are published in 7 CFR Chapter II (7CFR 274.12); and
- b) the rules of the Food Stamp Act of 1977 (7 USC 2011) and Part 248 – WIC Farmers' Market Nutrition Program (FMNP); and
- c) any other federal laws, regulations and rules that are applicable to the EBT System, including but not limited to the federal Electronic Funds Transfer Act (Title IX of the Consumer Credit Protection Act, 15 U.S.C. 1693 *et seq.*) and Regulation E (12 C.F.R.205) promulgated thereunder; the federal Truth-In-Lending Act (15 U.S.C.1601 *et. seq.*) and Regulation Z (12 C.F.R. Section 226) promulgated thereunder; and all applicable International Standards Organization (ISO) and American National Standards Institute (ANSI) standards referenced in any such laws, regulations, or rules.

**FMNP** means Farmers Market Nutrition Program, which provides fresh fruits and vegetables to women and children who are nutritionally at risk and to expand the awareness and use of farmers' markets.

**Merchant** means a farmer that has entered into a Merchant Agreement with CDP pursuant to which contract the farmer may sell goods to Recipients using the EBT System.

**PIN** means a Recipient's personal identification number.

**POS** means point of sale.

**Quest® Operating Rules** means the Quest® Operating Rules issued by the National Automated Clearing House Association, as amended from time-to-time.

**Recipient** means any individual person who is authorized to use a Benefit Card or mobile device to receive benefits from a State.



**SFMNP** means Senior Farmers Market Nutrition Program, which provides fresh fruits and vegetables to low-income seniors.

**Transaction** means: (a) with respect to the EBT System, one of the following transactions processed by the EBT System: Benefit Balance Inquiry, Food Stamp Purchase, Food Stamp Return, Cash Purchase, Void Last, Voucher Clear Purchase or Voucher Clear, WIC Purchase, WIC Void Last, an authorization request, cash withdrawal, payment transaction, refund, or reversal initiated by a Cardholder and that is transmitted to CDP for processing.

**WIC** means the USDA's Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

**WIC Operating Rules** means the WIC Operating Rules issued by U.S. Department of Agriculture Food and Nutrition Services, as amended from time-to-time.

## TERMS AND CONDITIONS

WHEREAS, Custom Data Processing, Inc., ("CDP") has developed a system for the redemption of Special Supplemental Nutrition Program for Women, Infants and Children (WIC), Farmers Market Nutrition Program (FMNP) and Senior Farmers Market Nutrition Program (SFMNP) benefits to eligible recipients using the EBT System; and

WHEREAS, Merchant, a retail seller of goods, represents itself to be properly authorized by the governing State agency to accept benefits in the State, in accordance with the Conditions of Participation listed below, and

WHEREAS CDP may offer access to a merchant-based portal in order to allow EBT Cardholders to access such benefits when purchasing goods from Merchant, and

WHEREAS CDP shall process redemption transactions made through a Merchant Web-Based Portal on behalf of Merchant in accordance with the terms of this Agreement.

NOW THEREFORE, CDP and Merchant hereby agree as follows:

### 1. CONDITIONS OF PARTICIPATION

Merchant must be authorized by the State to participate in the WIC, FMNP and/ or SFMNP program(s), and be authorized in accordance with Federal regulations. As a part of its determination, the State shall examine household shopping patterns. Authorized Merchants shall be identified by the State as a participating Merchant and in agreeing to the terms and conditions of this Agreement are entitled to the rights of participation as defined by this Agreement

### 2. MERCHANT ACCOUNTING

- 2.1. **Merchant Account.** Merchant shall maintain a checking account at a financial institution of Merchant's choice for purposes of electronic settlement of Transactions ("Settlement Account"). This checking account must accept debit and credit ACH Transactions.
- 2.2. **Merchant ACH Returns.** Any fees assessed by the Merchant's financial institution or by ACH Operator to CDP for activity related to processing Merchant's EBT & WIC redemption Transactions will become Merchant's responsibility and will be charged back to the Merchant by CDP and will be paid by Merchant.
- 2.3. **Merchant IRS Fees.** Merchant shall be liable for any fees or costs assigned to CDP by the IRS or State Treasury departments for updates, corrections, and re-distributions of 1099K filings for Merchant. Merchant must promptly notify CDP in writing of any licensing or tax reporting changes for Merchant
- 2.4. **Credits to Account.** On a weekly basis, Merchant's Settlement Account shall be credited in an amount equal to the aggregate value of all on-line and all authorized offline transactions completed pursuant to this Agreement less monthly service and transaction fees, chargebacks and applicable State taxes or other required deductions. CDP shall guarantee settlement for all Transactions approved by CDP. WIC Merchants shall have a cutoff time of 1:00 P.M., Eastern Time, with the option to change. For cutoff times prior to 1:00 P.M., Eastern Time, funds will be deposited by \_\_\_\_ to the Merchant's bank on the next settlement cycle. For cutoff times after 1:00 P.M., Eastern Time, funds will be deposited by \_\_\_\_ to Merchant's bank on the next settlement cycle. CDP reserves the right to discontinue

authorizing Transactions if CDP fails to receive reimbursement of funds from the appropriate government agency. In the event of such a discontinuance, CDP shall use reasonable commercial efforts to notify affected Merchants.

## 2.5. Out of Balance Discrepancies

2.5.1. Merchant shall notify the state of any EBT Transaction that is erroneously or believed to be erroneously handled by the EBT System within six (6) business days from the original Transaction date. Merchant shall supply the state with any supporting documentation upon request. Failure to notify the state within such six (6) business day period waives any right to an adjustment. In addition, the state may initiate adjustments where a Recipient submits a substantiated claim within ninety (90) calendar days of the date of a Transaction or where other System errors have been identified.

2.5.2. Merchant shall notify the state of any transaction that is erroneously or believed to be erroneously handled by the EBT System within six (6) business days of the original Transaction date. Merchant shall supply the state with any supporting documentation upon request. For any request to debit a cardholder, records of item UPCs, quantities, and dollar amount by item are required. Failure to notify the state and to provide supporting detail within such six (6) business day period waives any right to an adjustment. In addition, the state may initiate adjustments where a recipient submits a substantiated claim within forty- five (45) calendar days from the date of a Transaction or the date other System errors have been identified.

2.6. **Correction of Data.** In the event CDP employees cause errors in Merchant's data to occur and Merchant requests correction of such data within six (6) business days from the date of the error, CDP will correct such data as necessary at CDP's expense. Merchant is required to provide all information requested with respect to alleged errors. The expense to CDP of correcting such data shall be the only obligation

of CDP and shall constitute Merchant's sole and exclusive remedy with respect to such errors.

## 3. TERM AND TERMINATION

3.1. **Term** The term of this Agreement shall begin as of the Effective Date and shall continue until terminated in accordance with this Agreement or upon termination of the Contract between the Merchant and the State, whichever is earlier.

### 3.2. Termination

3.2.1. **By Merchant Without Cause.** Merchant may terminate this Agreement, for any reason, via certified letter received by CDP at least sixty (60) days prior to termination date.

3.2.2. **For Breach.** Either party may terminate this Agreement upon the material breach of this Agreement by the other party if the breaching party fails to cure such breach within (30) calendar days after receipt of written notice specifying in detail the breach claimed.

3.2.3. **By Request of Government Agency.** CDP may terminate this Agreement immediately upon the request of this State or U.S. Federal Agency having the authority to request such termination.

3.2.4. Notwithstanding anything to the contrary in 3.2.2 above, this Agreement shall immediately terminate upon written notification to CDP that Merchant is no longer authorized or approved to participate in State programs.

## 4. CHARGES TO CARDHOLDERS

Unless specifically allowed by law, Merchant shall not charge Recipients a fee for utilizing their benefits.

## 5. QUEST AND WIC OPERATING RULES

CDP and Merchant shall each comply with the Quest Operating Rules, as amended from time-to-time, issued by the National Automated Clearing House Association, and FNS Operating Rules for WIC EBT, FMNP and SFMNP as defined by USDA-FNS.

## 6. CONFIDENTIALITY/RELEASE OF INFORMATION

6.1. **Confidentiality.** "Confidential Information" means (i) a party's proprietary or confidential information which is designated in writing as

such or that by nature of the circumstances surrounding the disclosure ought in good faith to be treated as proprietary or confidential, and (ii) all CDP products or services, including all trade secrets contained therein. Each party agrees (a) that during the course of its performance of this Agreement it may learn certain information concerning the other party's Confidential Information; (b) that the Confidential Information of the other party shall remain the property of the other party, and that such Confidential Information is made available on a limited use basis solely in connection with this Agreement; (c) that it will advise its employees to whom the information is disclosed of their obligations under this Agreement; (d) that it will not use, sell, disclose or otherwise make available any such Confidential Information of the other party, in whole or in part, to any third party without the prior written consent of the other party; and (e) that it will utilize the same degree of care it utilizes for its own confidential information, but in no case less than a reasonable degree of care, to prevent disclosure or use of such Confidential Information to or by any unauthorized person or entity. Upon termination of this Agreement all copies of Confidential Information shall be returned to the disclosing party. The restrictions under this section shall not apply to information which: (i) is or becomes publicly known through no wrongful act of the party receiving the Confidential Information; or (ii) becomes known to a party without confidential or proprietary restriction from a source other than the disclosing party; or (iii) a party can show by written records that such information or data was in its possession prior to disclosure by the other party. In the event a party is legally compelled to disclose the Confidential Information it will be entitled to do so provided it gives the other party prompt notice and assists the other party, at the other party's expense, in obtaining any protective order.

**6.2. Disclosure of WIC Cardholder Information.** The use or disclosure by Merchant of any information concerning a WIC Cardholder for any purpose not directly connected with the performance of Merchant's duties pursuant to this Agreement is prohibited.

**6.3. Merchant Information.** Notwithstanding the foregoing, Merchant acknowledges that CDP may release Merchant information regarding Merchant's use of the System upon request by any Federal or State agency having authority to request such information, and Merchant shall have no claim or cause of action against CDP for such release of information.

## **7. COMPLIANCE WITH LAWS**

Merchant is responsible for complying with all applicable state and federal laws or regulations as amended from time to time, including but not limited to the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the American With Disabilities Act of 1990, the Clean Air Act, the Clean Water Act, the Energy Policy and Conservation Act and the Immigration Reform and Control Act of 1986. Merchant shall not, on grounds of race, color, religion, sex, sexual preference, national origin, creed, marital status, age, Vietnam era or disabled veteran's status, or the presence of any sensory, physical or mental handicap: (a) deny an individual any contracted activities or other benefits provided under this Agreement; (b) provide any contracted activities or other benefits to an individual which are different, or are provided in a different manner, from those provided to others under this Agreement; or (c) improperly deny any individual an opportunity to participate in any program provided by this Agreement through the provision of contracted activities or otherwise, or afford an opportunity to do so which is different from that afforded under this Agreement.

## **8. INDEMNIFICATION AND LIABILITY**

Notwithstanding any other provisions of this Agreement, CDP shall not be obligated to indemnify or to hold harmless Merchant, or Merchant's officers, directors, employees, or any other party from and against any claims or liability arising out of this Agreement and CDP's performance hereunder, except as required by applicable law or applicable state or federal operating rules, provided that CDP shall refund to Merchant the correct Transaction amount of an erroneous or fraudulent Transaction where such erroneous or fraudulent Transaction was caused solely by CDP's fraud, gross negligence, or breach of this Agreement. Merchant hereby agrees to indemnify and hold CDP, its officers, directors, employees, and agents harmless from and against any liability arising out of this Agreement and



## Agreement for Benefits Redemption · *Authorized Merchant*

Merchant's performance hereunder where required by applicable law or applicable state or federal operating rules, or where such claims or liability was caused solely by Merchant's fraud, gross negligence, or breach of this Agreement. In no event shall either party be liable to the other for indirect, incidental, or consequential damages.

8.1. **CDP Supplied Software.** CDP will furnish a web-based, online portal that is capable of processing cash-value benefits in markets for the WIC, FMNP and SFMNP programs. The online portal is accessible via a smart phone, tablet or other connected device with Wi-Fi connectivity or access to cellular coverage and data.

### 8.2. **Conditions of Use**

8.2.1. Use of CDP-supplied Software for purposes other than contracted reasons set forth herein is strictly prohibited.

8.2.2. The Merchant shall maintain security procedures reasonably necessary to ensure the security of the Software and any controllers.

8.2.3. All Software and title thereto shall at all times hereunder remain the property of CDP. CDP reserves a security interest in all Software. Merchant shall provide CDP all reasonable assistance in perfecting such interests. No right or title to Equipment shall pass to Merchant by virtue of this Agreement except as expressly provided hereunder.

8.2.4. Merchant shall not suffer or allow any lien, claim or encumbrance to attach to Software.

8.3. **Terminal Problems.** If Merchant believes CDP-supplied Software is malfunctioning, Merchant shall contact the WIC State Agency to report such problems. CDP will attempt to determine by phone if there is a Terminal problem. Merchant shall cooperate with CDP in attempting to resolve any Terminal problems. If a CDP-supplied Software has a problem that would negatively impact benefit redemption, CDP shall use its best efforts to update the Software within 48 hours after Merchant reports a service issue.

8.6. **Power.** Merchant is expected to have an adequately powered smartphone, tablet or other personal device capable of connecting to the internet and capturing images.

8.7. **NO WARRANTIES.** CDP MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE PROVIDED BY CDP AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

### 9. **TAXES**

Any and all sales, use, excise, value-added, personal property or any other taxes (excluding taxes based on CDP's net income) imposed, assessed, levied, or otherwise arising from the transactions contemplated by this Agreement or the installation, use or operation of Equipment shall be the sole responsibility of Merchant.

### 10. **NOTIFICATIONS OF ADDRESS OR OTHER CHANGES**

Within (30) calendar days of a change in ownership, Merchant must provide notice to CDP of any changes in the Merchant ownership and/or address. The new, or revised, ownership must obtain approval from the State WIC program before the merchant can begin to redeem WIC benefits. Merchant must provide notice to CDP of any changes in the Merchant bank account number. Merchant new ownership must complete a new Merchant Agreement and submit to CDP.

### 11. **NOTICE**

Any notice required or permitted hereunder shall be in writing and shall be deemed given when sent by first class mail, to the address of the party receiving notice as appears on the signature page of this Agreement or as changed through written notice to the other party. All legal notices will be sent via certified mail return receipt requested.

### 12. **SETTLEMENT ACCOUNT INFORMATION**

Merchant must provide CDP notice of any changes to its Settlement Account information three (3) days prior to making any changes to the Settlement Account information. In the event a Merchant fails to notify CDP of such changes, Merchant shall be responsible and shall reimburse CDP for any fees or costs assessed on CDP for failing to maintain correct settlement information.



**13. MERCHANT TAX ID/FEI**

CDP is obligated to send Merchant an IRS Form 1099 annually. Merchant must provide CDP with its correct Federal Tax ID/FEI. In the event that CDP is assessed any fees, interest, or penalties, by the IRS or a state taxing authority as a result of Merchants' failure to provide CDP with the correct tax information, Merchant shall reimburse CDP for any such fees.

**14. NO ASSIGNMENT**

Merchant may not assign this Agreement.

**15. FORCE MAJEURE**

Each party hereto shall be excused from performance hereunder for any period and to the extent that it is prevented or delayed in the performance of any obligation as a result of acts of God, pandemic, or other causes beyond its control.

**16. PRECEDENCE**

In the event of a conflict between the terms and conditions of this Agreement and the Quest or WIC Operating Rules, the Operating Rules applicable to the transaction shall take precedence.

**17. CHOICE OF LAW/DISPUTE RESOLUTION**

The Agreement shall be governed by the laws of the state of Kentucky, without regard to internal principles relating to conflict of laws. Disputes or matters in question between the parties shall be first subject to mediation in Frankfort, Kentucky prior to initiating arbitration. Mediation is a condition precedent to arbitration and is a material provision of this Agreement. Unless this contract has been completed, the parties shall carry on its performance during any mediation. A mediation proceeding may be initiated by submitting a written request to the other party within a reasonable time after the dispute has arisen, but in no event after the applicable statute of limitations has expired. The parties shall endeavor in good faith to mutually agree upon an acceptable mediator, but if the parties have not agreed upon a mediator within 30 days of the request for mediation, CDP shall select a mediator. Each party is to bear its own fees, costs and expenses of said mediation. In the event that mediation is unsuccessful, all disputes or other matters in question shall be resolved by binding arbitration before a single arbitrator in Frankfort, Kentucky in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment of

any resulting award may be entered by any court having jurisdiction over the parties or their respective property. The arbitrator shall decide any issues submitted in accordance with the provisions and commercial purposes of the Agreement and shall not have the power to award damages other than those described in the Agreement. The prevailing party in any dispute arising out of this Agreement shall be entitled to, and the arbitrator shall have jurisdiction to award, the recovery of reasonable attorneys' fees, costs and expenses.

**18. CLASS ACTION WAIVER**

TO THE EXTENT LEGALLY ENFORCEABLE, MERCHANT WAIVES ANY RIGHT TO PARTICIPATE IN A CLASS ACTION AGAINST CDP RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER.

**19. MODIFICATIONS**

CDP reserves the right to send Merchant a change in terms and conditions to Merchant's known address. New or modified terms shall become effective unless Merchant objects to the revisions within 30 days receipt of the notice of the modifications. Any objections to new or modified terms that are not made and timely received by CDP as provided herein, shall be deemed waived. Merchant's continued use of the services after the period for objection has passed shall be deemed acceptance of the new or modified terms.

**20. ENTIRE AGREEMENT**

Unless explicitly stated elsewhere, this Agreement is the complete Agreement between the parties and supersedes any other oral or written communication.

— END OF TERMS AND CONDITIONS SECTION —

**SECTION ONE: MERCHANT INFORMATION**

\* Required information

**Merchant Information**

**MERCHANT NAME \***

**PHYSICAL ADDRESS \***

**PRIMARY PHONE \***

**CITY \***

**STATE \***

**ZIP CODE \***

**IRS LEGAL FILING NAME \***

*Print the legal name of your enterprise as shown on your income tax return. If filing with a social security number, the IRS Legal Filing Name cannot be the name of the company. The IRS Legal Filing Name must be to whom the SSN has been assigned.*

**FEDERAL TAX ID OR SSN \***

Check one:

Federal Tax ID     SSN

**TYPE OF BUSINESS \***

(Check one)

Corporation     Individual/Sole Proprietor     Partnership     Foreign Entity\*  
 LLC     Government Entity     Non-Profit/Tax Exempt\*\*: \_\_\_\_\_

*\* If you select Foreign Entity, you must complete and provide CDP with a signed Form W-8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding. Download from <http://www.irs.gov/pub/irs-pdf/fw8ben.pdf>.*

*\*\* If you select Non-Profit/Tax Exempt, you must include your Tax Exempt number.*

**Operations Contacts**

**OPERATIONS CONTACT NAME (FARMER) \***

**PHONE NO:**

**OPERATIONS CONTACT EMAIL (FARMER) \***

**FAX:**

**Emergency Phone Numbers \***

**OPERATIONS CONTACT HOME PHONE**

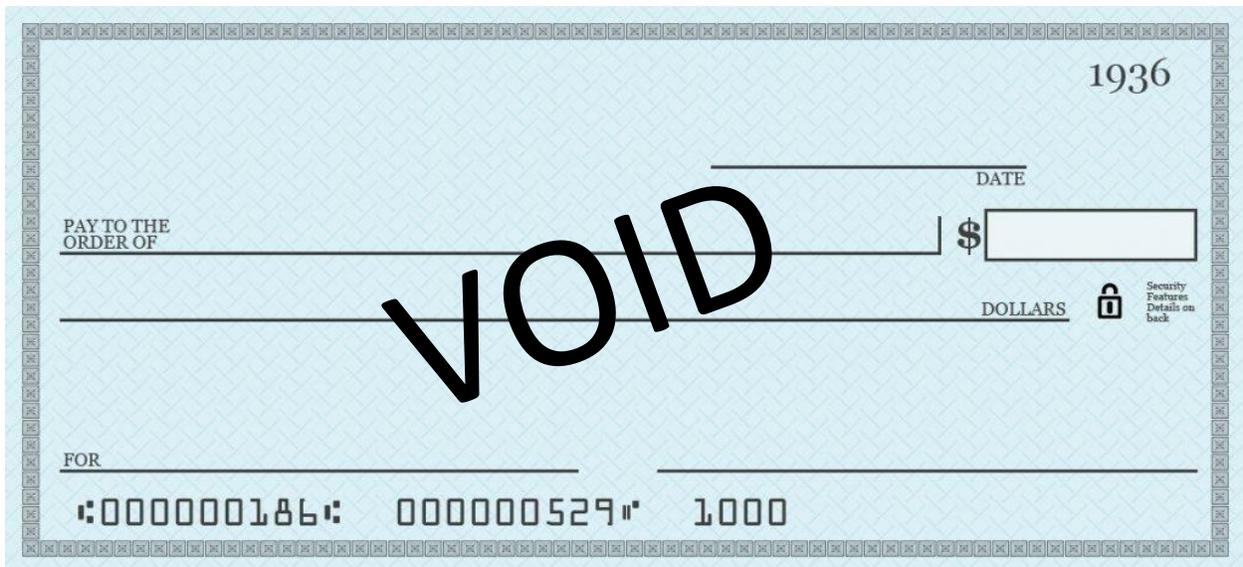
**CELL PHONE**

### MERCHANT FINANCIAL INFORMATION

For electronic settlement of transactions (per Terms and Conditions, Section 2.1 Merchant Account of this agreement), Merchant must maintain a *checking* account that can accept ACH Debits and Credits.

CDP will verify your financial institution and account information using the codes at the bottom of your check.

1. Write VOID on a business check.
2. BEFORE faxing (or mailing) the printed copy of the Agreement, tape top edge of voided check over the image below.



**\* Required information**

Bank Routing Number *	Merchant's Bank Account Number *																
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Store Hours \*

OPEN 24/7?  Yes

No (provide store hours below)

	OPEN	CLOSE	TIME ZONE:
MONDAY			
TUESDAY			
WEDNESDAY			
THURSDAY			
FRIDAY			
SATURDAY			
SUNDAY			

**SIGNATURE AND ACCEPTANCE**

ACCEPTED AND AGREED

<b>Signature (Merchant) *</b>	Signature (Custom Data Processing, Inc.)
<b>Print Name *</b>	Print Name
<b>Title *</b>	Title
<b>Date signed *</b>	Date received

Complete, sign, and return this agreement to CDP by Fax or mail.	<b>Fax to:</b> (502) 695-1777 Secure electronic fax, no cover page needed.
	<b>Mail to:</b> Custom Data Processing Attn: Merchant Services 951 Chenault Road Frankfort, KY 40601

— END OF MERCHANT SECTION —

**SECTION TWO: WIC VENDOR ID**

*To be completed by State WIC Agency.*

WIC VENDOR ID\*

*This will be provided by the WIC State Agency. You must have a WIC ID provided by the State to enter into this agreement.*

— END OF WIC VENDOR ID SECTION —